

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SPARROW FUND MANAGEMENT LP,

USDC SDNY
DOCUMENT
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DATE FILED: 5/27/2021

Plaintiff,

DISCOVERY ORDER

-against-

18-CV-4921 (PGG) (KHP)

MIMEDX GROUP, INC.,

Defendant.

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KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE

Consistent with the telephonic case management conference held on May 27, 2021 in the above-captioned matter, the parties are directed and advised as follows:

Briefing Schedules and the Motion to Stay Discovery:

On April 14, 2021 MiMedx filed a letter with the Court requesting leave to file a motion to amend MiMedx's Answer pursuant to Federal Rule of Civil Procedure 15(a)(2) in order to invoke New York's recently amended Anti-SLAPP Law. Sparrow does not oppose MiMedx filing the motion to amend but reserves its right to file an opposition after evaluating the motion and the applicable law. Accordingly, MiMedx's motion to amend must be filed by **June 11, 2021**. Sparrow's opposition must be filed by **June 25, 2021**. And MiMedx's reply must be filed by **July 2, 2021**.

Assuming MiMedx will be permitted to amend its Answer, MiMedx also seeks leave to file a motion for summary judgment based on the new defenses it plans to assert in its amended Answer. MiMedx suggests that all discovery be held in abeyance until the Court rules on MiMedx's contemplated motion for summary judgment. However, after hearing from the parties, and as set forth in more detail on the record, the Court finds that additional discovery is

required before summary judgment briefing and that a motion for summary judgment is premature before fact discovery is complete. Thus, the Court denies MiMedx's motion to stay discovery and its request to file a summary judgment motion at this time. Instead, MiMedx's moving papers for the summary judgment motion will be due on **September 30, 2021** (30 days after the close of fact discovery). Sparrow's opposition will be due on **October 29, 2021**. And MiMedx's reply will be due on **November 12, 2021**.

Depositions:

As directed by the Court, the parties shall meet and confer on a deposition schedule. By **June 11, 2021**, the parties shall submit a letter to the Court setting forth the deposition schedule for all party and non-party depositions in this case. To the extent Plaintiff seeks to conduct some depositions in person, it may in light of decreasing numbers of COVID-19 infections and increasing vaccination rates, unless a deponent needs the accommodation of a video deposition for specific medical reasons. The letter due on June 11 should clearly state which depositions will be held by video and which depositions will be held in person.

Requests for Admission, Interrogatories, and Supplemental Productions:

For the reasons set forth at the May 27, 2021 conference, the Court hereby denies Sparrow's request to compel MiMedx to respond to RFA No. 20 and Interrogatory No. 10.

Additionally, MiMedx confirmed for the Court that it is conducting a comprehensive review of the documents on its privilege log to determine which documents need to be produced in light of the Court's Opinion and Order at ECF No. 207. To the extent that MiMedx identifies additional documents that should be produced, MiMedx must produce those documents to Sparrow by **June 11, 2021**.

Finally, the Court will require Sparrow to conduct a supplemental search for documents for the two custodians identified in MiMedx's letter submission at ECF No. 209. By **June 4, 2021** MiMedx must provide Sparrow with its proposed search terms and date restrictors aimed at locating relevant and responsive communications in those custodians' files. The parties should then meet and confer on the proposed search parameters.

CONCLUSION

For the reasons set forth above, Sparrow's motion to compel (ECF No. 208) is GRANTED in part and DENIED in part. The parties are directed to the conference transcript for other rulings and directives of the Court.

SO ORDERED.

Dated: May 27, 2021
New York, New York


KATHARINE H. PARKER
KATHARINE H. PARKER
United States Magistrate Judge